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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/049,534

02/05/2002

Alan F Savicki

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3998

27023

7590

05/25/2004

THOMAS C. FEIX  
THE GLAD PRODUCTS COMPANY  
1221 BROADWAY #2344  
OAKLAND, CA 94623-1305

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/049,534	<b>Applicant(s)</b> SAVICKI, ALAN F	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 15-23, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrington (US 5,007,143) in view of Perlman (US 3,578,239).

Herrington teaches the claimed bag extra for third and fourth side seals. It is noted the method claims do not provide specific method steps. The claims are treated as product-by-process claims which do not further structurally limit the claimed invention.

Perlman teaches it is known to provide a bag with multiple side seals, more specifically two such side seals along each side wall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of multiple side seals to the bag of Herrington in view of Perlman. Doing so provides a more secure sealing arrangement at the bag side walls.

Regarding claims 5,6,20, and 21, Herrington as modified teaches the claimed bag except for fifth and sixth side seals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an additional side seal along each bag

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side wall, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

4. Claims 9-11 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 16 above, and further in view of Diplock (US 6,190,043).

Herrington as modified teaches the claimed bag except is silent regarding the seam construction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to since the examiner takes Official Notice of the equivalence of heat sealing, ultrasonic sealing, and adhesive sealing for their use in the bag art and the selection of any of these known equivalents to provide a seal between two bag side walls would be within the level of ordinary skill in the art.

Diplock additionally teaches the use of adhesives or hot sealing for creating bag side seals.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the known sealing methods for creating the side seals of Herrington. Doing so allows for expedient manufacturing of the bag as desired.

5. Claims 12 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 16 above, and further in view of Stolmeier (US 5,871,281).

Herrington as modified teaches the claimed bag except for U-channel fastening strips.

Stolmeier teaches a bag having U-channel fastening strips.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the fastening strip of Herrington for the U-channel strip taught by

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Stolmeier. Doing so is an obvious matter of design choice of known rib and groove equivalents for closing a bag.

6. Claims 13 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 16 above, and further in view of Laguerre (US 3,806,998).

Herrington as modified teaches the claimed bag except for arrowhead fastening strips.

Laguerre teaches a bag having arrowhead fastening strips.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the fastening strip of Herrington for the arrowhead strips taught by Laguerre. Doing so is an obvious matter of design choice of known rib and groove equivalents for closing a bag.

7. Claims 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 16 above, and further in view of Porchia et al. (US 5,664,299).

Herrington as modified teaches the claimed bag except profile fastening strips

Porchia teaches a bag having profile fastening strips.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the fastening strip of Herrington for the profile strips taught by Porchia. Doing so is an obvious matter of design choice of known rib and groove equivalents for closing a bag.

### ***Response to Arguments***

8. Applicant's arguments filed March 5, 2004 have been fully considered but they are not persuasive.

Regarding the applicant's remarks directed to the seals of Herrington, applicant's attention is directed to column 4, lines 53 and 56 which set forth the "bag B is formed by a pair

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of flexible plastic sheets 12 and 13". One of ordinary skill in the art would know that two sheets must be sealed together along the side edges by at least one seal in order to form a bag. Additionally, an explicit teaching of modifying a prior art reference in that prior art reference would fall under the doctrine of anticipation as established in 35 USC 102, and not obviousness as established in 35 USC 103. The rejection set forth in the Office action falls under obviousness.

Regarding applicant's remarks directed to Perlman, its intended use is not at issue. Rather, Perlman's reason for providing more than one side seal provides motivation to one of ordinary skill in the art to double seal the bag of Herrington to be stronger and thus, more shock resistant and shock absorbable. Additionally, the method of closing the bag of Perlman is irrelevant since that is not the feature relied upon in the rejection.

Regarding applicant's remarks directed to Diplock, again applicant is not considering the rejection on face value, but is reading other features taught by the prior art reference into the rejection. It is not applied because of its lack of fastening strips or that it was implied that the bag of Diplock has fastening strips as applicant argues. Instead, Diplock is applied *only* for its teaching of adhesives or heat seals for creating bag side seals. See the rejection in paragraph 4 above.

Whereas applicant has not provided arguments in view of the other combinations of references presented in the prior Office action and represented herein, the examiner does not provide comments directed to those rejections.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
May 21, 2004



Robin A. Hylton  
Primary Examiner  
GAU 3727